



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

SMC

Docket No: 02094-00

5 October 2000

GYSGT [REDACTED] USMC  
[REDACTED]  
[REDACTED]

Dear Gunnery Sergeant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552. You requested removal of two fitness reports, for 21 November to 29 December 1997 and 1 October to 25 November 1998.

It is noted that the Commandant of the Marine Corps (CMC) has modified the contested fitness report for 1 October to 25 November 1998 by removing all but the first, second and last sentences from the third sighting officer's comments, which eliminated all reference to your civil criminal proceedings.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 5 October 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 16 March 2000, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice warranting further correction. In this connection, the Board substantially concurred with the comments contained in the report of the PERB.

Specifically concerning the contested fitness report for 1 October to 25 November 1998, the Board was unable to find this report was based on a personality conflict, but they observed it is a subordinate's responsibility to get along with superiors. They were likewise unable to find you were not counseled about your failure of the combat readiness evaluation, noting the reviewing officer specifically stated you had been counseled about this failure. Finally, they

found the reviewing officer did not contradict your reporting senior's comment, in the preceding uncontested report for 27 March to 30 September 1998, that your refresher training was due to your extended time away from your military occupational specialty; rather, he merely indicated this was not the sole reason for the training.

In view of the above, your application for relief beyond that effected by CMC has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosure



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
3280 RUSSELL ROAD  
QUANTICO, VIRGINIA 22134-5103

2094-00  
IN REPLY REFER TO:  
1610  
MMER/PERB  
16 MAR 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)  
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF  
GUNNERY SERGEANT [REDACTED], [REDACTED] USMC

Ref: (a) GySgt. [REDACTED] DD Forms 149(2) of 29 Dec 99  
(b) MCO P1610.7D w/Ch 1-4  
(c) MCO P1610.7D w/Ch 1-5

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 9 March 2000 to consider Gunnery Sergeant [REDACTED] petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 971121 to 971229 (CD) -- Reference (b) applies
- b. Report B - 981001 to 981125 (CD) -- Reference (c) applies

2. The petitioner contends that Report A violates not only reference (b), but Depot and Regimental Orders as well. It is his belief that his entire case was mishandled by the command and that comments by the Reviewing Officer are inappropriate. Concerning Report B, the petitioner alleges the report does not reflect his true abilities, and was based primarily on a personality conflict. He also challenges the fact that the inconsistencies between his rebuttal and the comments of the Reviewing Officer were not adjudicated by the Third Sighting Officer.

3. In its proceedings, the PERB concluded that, with one exception, both reports are administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. In his adjudication of Report A, the Reviewing Officer dispelled any perception that the petitioner's relief of duties as a drill instructor did not meet the requirements of established local and Marine Corps directives. In fact, given the gravity of the situation, it appears as though the petitioner was afforded ample consideration.

b. The petitioner is correct concerning the content of the Third Officer's comments. In that Lieutenant Colonel [REDACTED]

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introduced new and additional adverse material, the petitioner should have been afforded an opportunity to respond. Further, no mention should have been made of the matter for which the petitioner was arrested--only the violation of which he was ultimately convicted. Given the foregoing, the Board has directed elimination of the following verbiage from Lieutenant Colonel [REDACTED]'s comments: "On 8 November 1997 Gunnery Sergeant [REDACTED] was arrested by San Diego Police for violating California Penal Code section 647(b), Solicitation of Prostitution/Oral Copulation. On 8 December 1997 he was tried in San Diego Municipal Court for Solicitation of Prostitution. In a pretrial agreement he plead guilty, and was found guilty, of the reduced offense of section 415(3), Offensive Words, and fined \$500.00. His disregard for our Core Values caused me to lose faith in his abilities to lead and act as a role model for junior drill instructors and recruits."

c. The petitioner furnishes no corroborating evidence that Report B is anything other than a fair and accurate assessment of his performance during the stated period. In this regard, the Board finds that his allegation of a "personality conflict" has not been documented or otherwise proven.

d. In reference (a), the petitioner stated that Item 19 of Report B had been marked "not applicable." However, a review of the Reviewing Officer's comments, as well as the report of record, both indicate that a correction was warranted and had been made.

e. The Reviewing Officer was extremely diligent in resolving any inconsistencies between the petitioner and his Reporting Senior. The petitioner stated that he had been relieved for one event (a 100 mil firing error at CAX 99-2). Lieutenant Colonel [REDACTED] stated that this was incorrect and that it was a failure to supervise the artillery gun line, a failure to properly ensure that safe firing procedures were continuously followed, and a failure to meet the expectations of the Battery Commander and Battalion Field Chief with respect to the duties of the Battery Gunnery Sergeant (i.e., the petitioner's billet assignment).

f. The petitioner's belief that additional adjudication by the Third Officer was required is considered without merit. Simply stated, there was nothing further to resolve, as the Reviewing Officer addressed each of the petitioner's concerns, albeit finding in favor of the Reporting Senior in each instance.

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4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness reports should remain a part of Gunnery Sergeant [REDACTED]'s official military record. The limited corrective action identified in subparagraph 3b is considered sufficient.

5. The case is forwarded for final action.

[REDACTED]  
[REDACTED]  
[REDACTED]  
Chairperson, Performance  
Evaluation Review Board  
Personnel Management Division  
Manpower and Reserve Affairs  
Department  
By direction of the Commandant  
of the Marine Corps